

REMARKS

This Amendment is responsive to the Office Action dated October 5, 2004.

Claims 1, 2 and 3 remain in the case.

Claim 1 was objected to because there was a lack of antecedent basis for "said element" in line 11. However, the Applicant has amended claim 1 at line 11 by inserting the term "ejection", which clarifies that the said element is the "ejection" element.

Claim 2 was objected as informal because the term "consist" should have been "consists". The Applicant has amended claim 2 to make that change.

Claim 1 has also been amended to add a phrase from the abstract of the disclosure which will limit the "home position" of the ejection element, to a position "where the ejection element protects the baler's tailgate from damage." Claim 1 has also been amended to include the "cantilever support" construction identified at page 11 lines 17-24 of the specification.

Claims 1, 2, and 3 have been rejected under 35 U.S.C. 103(a) as being obvious over the Olin reference in view of the Van der Lely reference. This rejection is traversed and reconsideration is respectfully requested for the reasons hereinafter set forth.

The claimed invention, as presently amended, resides in the unexpected improvements arising from modification of a round baler which sequentially controls the (1) lifting of its tailgate, (2) the releasing of its bales, and (3) the action of its ejection element, which modification is characterized by hydraulic tilting and returning of the ejection element from and to a "home position," which "home position" protects the baler's tailgate from damage.

The Olin reference discloses a sequentially controlled parallel hydraulic system where the hydraulic tailgate operates in sequence with a kicker-type ejection element. However, the kicker in its home position is collapsed and therefore would not protect the tailgate from an ejected bale. Olin teaches away from modifying his hydraulic system to incorporate pivotally mounted conveyer systems like that of Van der Lely because they

"present additional mechanical breakdown problems" (Olin column 3, lines 6 and 7).

The Applicant respectfully request that the Examiner reconsider the rejection in view of Olin's negative teaching.

"The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification: [In re Gordon, 733 F.2d at 902, 221USPQ at 1127 (Fed. Cir. 1984)].

Moreover, while the Van der Lely reference offers a ramp member which is pivotally attached, this ejection element, in its "home position," does not protect the baler tailgate, but the ramp member is itself the tailgate.

The Renaud and Quartaert references have been cited but not applied. Neither reference returns its carriage member or ejection member to the home position "hydraulically", but instead is by spring bias, which spring bias returns the ejection element of Quartaert back to a home position within the baler chamber. The Renaud reference returns the ramp 30 to a raised position against raising jacks 19 and 20 (see Figures 6 and 7 and the translated abstract which the Applicant has provided as Exhibit A). But Olin teaches away from "ramps" at column 3, lines 2-5, which even though offered as "simple solutions", "they can fail to produce the desired results when baling is carried on in terrain that is not flat." Surprisingly, the Applicant's improvements do indeed enable the desired results, even on terrain that is not flat. The Applicant respectfully submits that the shortcoming of ramps is that they require a conveyor system or kicker to remove the bales on downhill terrain. However, the Applicant's cantilever support construction, without any suggestion from the Renaud reference, allows the ejector ramp to be shorter than it might be otherwise and thus permits a steeper dump, which in turn allows bales to roll off when operating on downhill slopes, without need for either a kicker or a conveyor system.

To combine Olin, merely to reject the present invention in the face of Olin's negative teachings away from the invention, is believed to be unfair, and to constitute an improper resort to "hindsight reconstruction." The present invention may be "simple", but simplicity is an improper standard for obviousness under 35 U.S.C. 103. What appears simple in "hindsight," oftentimes, as is the case here, is not obvious at all. The Examiner has ignored negative teachings in Olin as did the Examiner in the case of In re John R. Fritch 972 F.2d 1260, 23 USPQ2d 1780 (Fed Cir 1992) where it was held as follows:

"Here the Examiner relied upon hindsight to arrive at the determination of obviousness. It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This Court has previously stated that 'one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention'."

Wherefore, reconsideration is respectfully requested and an early allowance of the claims as being in condition for allowance is respectfully solicited.

If the Examiner has any further requirements or questions prohibiting placing the present claims in condition for allowance, Applicant's undersigned attorney would appreciate a telephone call at the number listed below.

Respectfully submitted,

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Bale ejector on a rolled-bale baler.

Patent Number: EP0206889
Publication date: 1986-12-30
Inventor(s): RENAUD LOIC
Applicant(s): HESSTON SA (FR)
Requested Patent: EP0206889, B1
Application Number: EP19860401207 19860605
Priority Number(s): FR19850009321 19850619
IPC Classification: A01F15/00
EC Classification: A01F15/08F1
Equivalents: DE3674649D, FR2583608
Cited patent(s): GB2138354; FR2546368; EP0110056; EP0104510

Abstract

1. Device for the ejection of fodder bales on a round-bale press intended to be towed by a tractor vehicle, the said press comprising a movable frame (1) carrying a rotary fodder pick-up member (2) in its lower part and bale-forming means (5, 6) in its upper part, the frame (1) being mounted on a pair of wheels (14) in contact with the ground, by means of first levers (16) arranged on each side of the frame, each first lever (16) being articulated, at one of its ends, on a pivot axle (17) of the frame and, at its other end, on one end of a frame-raising jack (19, 20), the other end of which is articulated on the frame (1), and the lever (16) carrying in its central part one of the wheels (14), the said ejection device being characterized in that it comprises a second lever (28, 31) mounted on the pivot axle (17) of the first lever (16) and having a first arm (28), on which one of the ends of a bale-rolling ramp (30) is articulated, and a second arm (31) which is offset angularly relative to the first (28) and on which is articulated a rod (33) mounted slidably in a guide member (34) fastened to the rolling ramp (30), the said rod (33) carrying a stop (35), against which bears one of the ends of a spring (36) arranged round the rod (33), the other end of the spring bearing against the guide member (34).

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EXHIBIT A